

ORDINANCE NO. 91 - 12

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, TO BE KNOWN AS THE CONCURRENCY EXEMPTION EXTENSION ORDINANCE, PROVIDING PROCEDURES AND CRITERIA TO EXTEND CONCURRENCY EXEMPTION CERTIFICATES ISSUED PURSUANT TO ORDINANCE NO. 89-35, AS AMENDED; PROVIDING FOR SHORT TITLE; PROVIDING FOR AUTHORITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR WHO MAY SUBMIT CONCURRENCY EXEMPTION EXTENSION APPLICATIONS; PROVIDING FOR PROCEDURES; PROVIDING CRITERIA TO DETERMINE WHETHER OR NOT A DEVELOPMENT IS CONTINUING IN GOOD FAITH; PROVIDING FOR CONTINUING EXEMPTION FOR CERTAIN RESIDENTIAL AND NON-RESIDENTIAL PROJECTS HOLDING CONCURRENCY EXEMPTION CERTIFICATE; PROVIDING FOR ADMINISTRATIVE APPEAL; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CAPTIONS; PROVIDING INCLUSION IN CODE OF LAWS AND ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Ordinance 89-35 "The Concurrency Exemption Ordinance of Palm Beach County," Section XC.(1)(b) requires Palm Beach County to adopt an ordinance setting forth criteria and procedures for determining whether development is continuing in good faith after the granting of a concurrency exemption determination; and

WHEREAS, Ordinance 89-35 was created for a limited duration and pursuant to Section XVI, provides that the ordinance is of no further force and effect after all applications are processed pursuant to the Ordinance; and

WHEREAS, Ordinance 89-35 provides in Section X.C that a concurrency exemption determination shall expire two years following the date of rendition, but anticipates an extension for one or more year periods; and

WHEREAS, it is in the best interest of Palm Beach County that development which is progressing in good faith should be provided with a continuing exemption from concurrency; and

WHEREAS, it has been determined that extensions of concurrency exemption should be given out for two year time periods to streamline the process.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY AS FOLLOWS:

1 Section I. Short Title This Ordinance shall be known as, and may
2 be cited as the "Concurrency Exemption Extension Ordinance of Palm
3 Beach County, Florida."

4 Section II. Authority This Ordinance is adopted pursuant to F.S.
5 Chapters 125 and 163; F.A.C. Rule 9J-5; the Florida and U.S.
6 Constitutions; the Palm Beach County Charter; Palm Beach County
7 Ordinance 89-35; and the 1989 Palm Beach County Comprehensive Plan,
8 specifically: (1) Administration, Concurrency and Density
9 Determination for Committed Development; (2) Land Use,
10 Implementation of the Land Use Element, Zoning in
11 Compliance/Activities to be in Conformance with Plan Element
12 Provisions, Section 4: Status of Existing Development
13 Approvals/Non-Conforming Uses, Structures; and (3) Capital
14 Improvement, Policy 2-i(1), 2-j, and 2-1.

15 Section III. Definitions

16 A. For purposes of this Ordinance, except as specifically
17 provided herein or unless the context clearly indicates otherwise,
18 the terms defined in the Code of Laws and Ordinances of Palm Beach
19 County, Florida, and the Plan shall have the meaning therein. In
20 the event of a conflict between the Code of Laws and Ordinances and
21 Plan, the Plan shall control.

22 B. Unless the context clearly indicates otherwise, the terms
23 set forth below shall have the meaning indicated below for purposes
24 of this Ordinance.

25 Act - the Local Government Comprehensive Planning and Land
26 Development Regulation Act, F.S. §§163.3161 et seq. (1989).

27 Building Construction - the erection of a structure intended
28 for human habitation in the case of residential land use, or
29 occupancy or use of such in the case of non-residential land use.

30 Concurrency Exemption Certificate - a properly issued order of
31 the Hearing Officer pursuant to Ordinance 89-35 as amended by which
32 a parcel or lot is exempt from the Concurrency Requirements of the

1 Plan.

2 Concurrency Exemption Extension Certificate (Certificate of
3 Extension) - Order issued by Planning Director extending concurrency
4 exemption for up to a two year period.

5 Concurrency Requirements of the Plan - the provisions in the
6 Plan and the implementing land development regulations requiring
7 that public facilities for traffic circulation, mass transit,
8 sanitary sewer, potable water, recreation/open space, fire-rescue,
9 solid waste, and drainage are available at the minimum levels of
10 service concurrent with the impact of the Development; and, as to
11 the applicability of expanded or more stringent traffic performance
12 standards pursuant to State mandates under Ch. 163, Florida Statutes
13 and F.A. C. Rule 9J-5 such requirements as set forth in the future
14 traffic performance standards ordinance(s).

15 Condition of Approval - a condition imposed as part of, or
16 associated with, the issuance of a Valid Local Government
17 Development Order.

18 Density - the number of dwelling units per acre for residential
19 land uses.

20 Developer's Agreement - an agreement executed between a local
21 government and developer associated with the issuance of a Valid
22 Local Governmental Development Order entered into pursuant to
23 Florida Statutes, Sections 163.3220; et seq.

24 Development - as defined in §380.04, Florida Statutes, except
25 that it shall not include the following items listed therein: (1)
26 the dividing of land into two or more Parcels; (2) demolition of a
27 structure; (3) deposit of refuse, solid or liquid waste, or fill on
28 the Parcel unless the Valid Local Government Development Order is
29 exclusively and specifically for such; (4) site preparation work
30 consisting of excavation, earth moving, and the like unless tied to
31 a contract for required improvements or backed by surety, or as part
32 of a local development order; and (5) lot clearing.

1 Development Order - as defined in F.S. §163.3164(6).

2 Development Permit - as defined in F.S. §163.3164(7).

3 Expenditure - the irrevocable contractual obligation which
4 requires the remittance of money by the Applicant for services,
5 goods, facilities, or fixtures, for the Project; the post remittance
6 of money for such.

7 Guaranty - sufficient funds over which the County has control
8 irrevocably committed by written instrument to secure complete
9 performance of a contract for required improvements, condition of a
10 Development Order or Road Agreement.

11 Government - Local government, State agencies, or special
12 purpose districts.

13 Improvements - water, sewer, and other utilities, roads, parks,
14 recreational; amenities, traffic control devices and signage, or
15 street lights which may be publicly or privately maintained.

16 Intensity - the number of square feet per acre and specific
17 land use for non-residential uses.

18 Local Government - Palm Beach County, Florida.

19 Local Government Development Order - a Development Order
20 properly issued by the County through procedures established by Code
21 which establishes the specific use or uses of land, sets the
22 Density, and involves an active and specific consideration by the
23 County of particular detailed development concept. It shall include
24 Affidavits of Exemption and Special Exception Subdivision approval.
25 It typically involves the submission and review of a master plan,
26 site plan, or building plans, but may not necessarily involve such.
27 It shall not include land use designations established by a Local
28 Government's Comprehensive Plan. It does not include comprehensive
29 general rezonings/district boundary changes initiated by the County.
30 It typically involves a petition of the land Owner for his property
31 alone and not adjoining properties. It does not include vegetative
32 removal, clearing, grading or demolition permits.

1 Lot - real property legally described by plat or deed, recorded
2 in the Official Records of the Clerk of the Circuit Court in and for
3 Palm Beach County, Florida; or bona fide agreement for deed and
4 identified on the Property Appraisers' maps.

5 Master Property Owner's Association - a Property Owner's
6 Association of which membership is mandatory with the ownership of
7 property subject to the Master Property Owner's Association and
8 which has the authority to represent the members and bind the
9 members by such representation.

10 Off-Site Improvements - improvements constructed outside of the
11 boundaries of the Project which are required as a part of a
12 development approval.

13 Owner - the owner of the freehold estates, as appears by deed
14 of record, or agreement for deed. It shall not include short-term
15 lessees, reversioners, remainderman, or mortgagees. It shall
16 include lessees with a lease of more than twenty-five (25) years.

17 Plan - the 1989 Palm Beach County Comprehensive Plan as amended
18 from time to time.

19 Planned Development - a land area under unified control that is
20 designed and planned to be developed in a single operation or by a
21 series of pre-scheduled Development phases according to a final
22 master land use plan approved by the County pursuant to its zoning
23 code which is subject to requirements for plats or site plans being
24 filed in certain times, as found in the requirements in Sections
25 500.21E.11g.1 and 2; 500.229g.1 and 2; 500.24 E.9; and 622I.6e. 1
26 and 2 of The Zoning Code of Palm Beach County (1990).

27 Planning Director - the director of the Planning Division, Palm
28 Beach County Department of Planning, Zoning and Building, or
29 designee.

30 Platted - platted in accordance with F.S. Ch. 177 and the Land
31 Development Regulations of the Local Government having jurisdiction.

1 Project - a land use or group of land uses involving the
2 development of a particular Parcel of land at a particular density
3 which was granted a Valid Local Government Development Order; or
4 which substantially complies with applicable provisions of the Palm
5 Beach County Subdivision Code as determined by the Director of the
6 Land Development Division of the Palm Beach County Engineering
7 Department.

8 Property Owners Association - a non-profit organization created
9 pursuant to Florida law consisting of real property owners
10 representing the owners in matters of common interest affecting
11 their property.

12 Public Facilities - as defined in F.S. §163.3164(23) and fire-
13 rescue major capital improvements.

14 Rendition - the filing of a signed, written decision.

15 Site Improvements - Improvements that are installed within the
16 bounds of the Project, or installed outside of the bounds of the
17 Project which are required for project development.

18 Sworn Statement - An affidavit, properly executed and
19 notarized, containing all required information and attesting to the
20 veracity, accuracy, and completeness of the information.

21 Valid - a Development Order or other authorization which was
22 legally issued, was not issued by mistake, and that has not expired,
23 lapsed, or been abandoned, revoked, or canceled; or is not subject
24 to such by the passage of time or the conduct of the Owner or
25 Developer, and on which or for which all conditions of approval are
26 satisfied that must be satisfied by the terms or conditions of
27 approval.

28 Vested - vested pursuant to the application of Florida law.

29 Section IV. Who May Submit Concurrency Exemption Extension
30 Application

31 A. Owner. An Owner or group of Owners, or the authorized
32 agent of such, may submit an application for a Concurrency Exemption

1 Extension as to particular Parcel or Parcels previously granted a
2 concurrency exemption certificate pursuant to Ordinance 89-35. A
3 Master Property Owner's Association may submit an application as to
4 an area subject to it, provided specific authorization is given to
5 such application in accordance with the declaration, articles, and
6 by-laws.

7 B. Agent's Authorization. An application for an Owner made by
8 an agent shall contain a written authorization signed by the Owner
9 and notarized specifically authorizing the agent to represent the
10 Owner as to the Owner's Lot or Parcel for a review and determination
11 under this Ordinance.

12 C. Director of the Palm Beach County Planning Division may
13 initiate an application for a concurrency exemption extension for a
14 parcel or parcels previously granted a concurrency exemption
15 pursuant to Ordinance No. 89-35.

16 Section V. Procedure

17 A. Submit to Planning. Applications for Concurrency Exemption
18 Extension shall be submitted to the Planning Division of the
19 Planning, Zoning and Building Department of Palm Beach County no
20 sooner than five (5) months or later than three (3) months, prior to
21 expiration of a Concurrency Exemption Certificate or Certificate of
22 Extension.

23 B. Contents of Application.

24 1. Form. The application shall be made on a form
25 established by the Department of Planning, Zoning and Building and
26 available at the Planning Division.

27 2. Information. The application shall contain such
28 information as the Division requires and as reasonably necessary to
29 provide complete information for a determination under this
30 Ordinance, as determined by the Planning Director including any
31 information adverse to the Applicant.

1 3. Sworn Statement. The Application shall contain a
2 Sworn Statement by the applicant attesting to the truth and accuracy
3 of the information contained therein.

4 C. Review. The Planning Division shall review all
5 applications timely submitted pursuant to this Ordinance. The
6 Planning Division shall review the application to determine whether
7 it is technically complete. Within ten (10) working days of receipt
8 of an application, the Planning Director shall send a letter to the
9 Applicant verifying the completeness, and sufficiency of the
10 information, or requesting additional information. If Additional or
11 revised information is required by the Planning Director, the
12 applicant shall have fifteen (15) working days from the date the
13 letter is sent to submit additional or revised information. If no
14 additional information is submitted in a timely manner, the Director
15 shall determine that the development is not continuing in good
16 faith. The Planning Director shall have ten (10) working days from
17 the date additional or revised information is submitted to determine
18 if the application is complete and a minimum of fifteen (15) working
19 days from the date the application is found complete to make a
20 determination of whether or not Development is continuing in good
21 faith based on the criteria set forth in Section VII of this
22 Ordinance.

23 D. Written Determination. The Planning Director shall issue
24 either a certificate of extension or letter denying the extension.
25 The determination of the Planning Director shall include a legal
26 description and Property Control Number of the property to which it
27 applies. The Certificate of Extension for a Valid Local Government
28 Development Order shall be valid for two years from the date the
29 Planning Director enters the written order granting the extension.

30 A Certificate of Extension is granted for a specific parcel of land
31 and is not transferrable to another physical location. A change in
32 ownership of a parcel of land granted concurrency exemption

1 extension shall not extinguish the concurrency exemption extension.

1 Section VI. Applicability

2 A. This Ordinance is limited to determining whether or not
3 a Project or Lot found exempt from the concurrency provisions of
4 the 1989 Comprehensive Plan pursuant to Ordinance 89-35, the
5 Concurrency Exemption Ordinance, is continuing in good faith and is
6 eligible to remain exempt from the concurrency requirements of the
7 1989 Comprehensive Plan.

8 B. All Concurrency Exemptions and Certificates of Extension
9 shall be issued for the number of units or square footage shown on
10 the approved Site Plan or Master Plan most recently certified by
11 the Site Plan Review Committee. Any Concurrency Exemption
12 Certificate or Certificate of Extension shall be adjusted
13 accordingly. Any increase in units above that shown on the current
14 Site Plan/Master Plan shall require a concurrency reservation or
15 determination.

16 Section VII. Criteria to Determine Whether Development is
17 Continuing in Good Faith

18 A. Continuing in good faith shall mean, and consideration
19 shall be made of, diligent efforts directed toward achieving the
20 ultimate development, marketing, and use of the land, in accordance
21 with the development order(s). Diligent efforts shall require
22 reasonable and timely pursuit of all necessary approvals,
23 certifications and permits; financing; and marketing, together or
24 in a sequence customary to the industry. Factors militating
25 against a finding of diligent efforts shall be delays occasioned by
26 any person holding a legal or equitable interest in the property,
27 its agents, contractors, or employees acting on behalf of the
28 owner; marketing of the entire project as a whole, unless the
29 project is of such a nature or size that it can only feasibly be
30 marketed as a single unit; the discontinuation of attempts at
31 obtaining required approvals, certifications, and permits; the

1 discontinuation of a construction activity (including clearing,
2 grubbing, filling, excavating, placement of infrastructure, and
3 building construction) prior to the completion of the particular
4 construction activity; delay of proceeding toward the next
5 customary phase of construction activity; the discontinuation of
6 design work; the discontinuation of sales or leasing efforts; the
7 removal of construction personnel, facilities, and equipment from
8 the project; the delay of proceeding with the next phase of
9 development.

10 1. The following shall not be considered as factors
11 militating against a finding of proceeding in good faith: (a)
12 delays caused solely by government action or inaction; (b) delays
13 caused by administrative, quasi-judicial or judicial proceedings,
14 which prevent development from occurring; and (c) delays caused by
15 natural disaster or acts of God.

16 2. The economic state of the development industry
17 economy shall be considered only as related to the Palm Beach
18 County region and the development industry as a whole and not a
19 particular market segment. Economic conditions shall only be
20 considered for purposes of determining customary practices of local
21 developers as a measure of the diligence and good faith of the
22 Applicant.

23 3. Notwithstanding anything contained to the contrary
24 within this Article VII, Development shall be deemed to be
25 continuing in good faith as to a Lot which has been granted a
26 Concurrency Exemption pursuant to Palm Beach County Ordinance 89-35
27 within a validly divided area which has a Local Government
28 Development Order. Good faith may be presumed provided that all
29 Site Improvements required by the Local Government Development
30 Order, or as required by the Palm Beach County Subdivision Code, as
31 a condition to obtaining a building permit upon the Lot have been
32 installed, and that Development activity in the nature of the

1 construction of new single family residences has taken place since
2 the granting of the exemption or the extension thereof upon other
3 Lots within the area.

4 B. In determining whether development is proceeding in good
5 faith, the County shall recognize that land development is a
6 complex task involving a series of governmental approvals.
7 Recognizing this, the following factors shall be considered where
8 relevant:

- 9 1. The number and type of development orders applied
10 for or received since the exemption certificate was
11 issued.
- 12 2. The relationship of the development orders to other
13 development orders in the sequence of development
14 orders required.
- 15 3. Was each development order received within the
16 required time-frame or were time extensions
17 necessary.
- 18 4. Were time extensions granted and how many?
- 19 5. What, if any, development activity was commenced
20 during each respective time extension?
- 21 6. Whether needed permits/approvals (county and
22 others) were actively and continuously pursued.
- 23 7. The type of development orders remaining which are
24 needed to complete the land development.
- 25 8. The time customarily associated with obtaining
26 various development orders.
- 27 9. The percentage of development permitted and
28 completed during the concurrency exemption or
29 extension period compared to the size of the
30 project and the historic average percent of
31 development completed each year.

- 1 10. The overall extent and type of development
- 2 commenced and completed as related to the project's
- 3 size and use.
- 4 11. If the project is phased, were the dates of each
- 5 phase met.
- 6 12. Conditions placed by the County in issuing the
- 7 development order.
- 8 13. Whether any special exception conditions of
- 9 approval limited or phased the amount of
- 10 construction due to conditions beyond the property
- 11 owner's control.
- 12 14. Fulfillment of special exception time certain
- 13 conditions of approval, if any.
- 14 15. The marketing practices associated with the
- 15 project; e.g. whether the entire Project is being
- 16 marketed as a whole for sale.
- 17 16. The reasonable development time-line of that type
- 18 and size of development.
- 19 17. The number and type of contractors, engineers,
- 20 consultants, tradesman, and professionals working
- 21 on the project, and their respective activities.
- 22 18. Whether any delay was caused by government changing
- 23 an approved time plan for commencement of
- 24 construction of infrastructure.

25 C. Section 402.6 Time Extension

26 Rezoning, revocation of a special exception or limiting

27 development intensity or density to entitlement by the Board of

28 County Commissioners pursuant to Section 402.6 of the Palm Beach

29 County Zoning Code shall be prima facie evidence that the

30 development is not continuing in good faith and any exemption or

31 extension thereto shall be automatically revoked.

1 D. Section 402.9 Mandatory Review of Development Approval
2 Rezoning, revocation of a special exception or limiting
3 development intensity or density to entitlement by the Board of
4 County Commissioners pursuant to Section 402.9 of the Palm Beach
5 County Zoning Code shall be prima facie evidence that a project is
6 not continuing in good faith and any exemption or extension thereto
7 shall be automatically revoked.

8 VIII. Approved Residential Projects Holding Concurrency Exemption
9 Certificates

10 For the following types of residential developments, the
11 Planning Director shall initiate an application for a concurrency
12 extension certificate provided the project received a concurrency
13 exemption certificate properly issued pursuant to Ordinance 89-35,
14 as amended and the following criteria are met:

15 A. A platted subdivision, if all required improvements have
16 been installed or guaranteed.

17 B. Planned unit development, if platting schedule is
18 maintained.

19 C. Phased subdivision, if plats are recorded in accordance
20 with an approved phasing schedule.

21 IX. Approved Non-Residential Projects Holding Concurrency
22 Exemption Certificates

23 For the following types of non-residential developments, the
24 Planning Director shall initiate an application for a concurrency
25 extension certificate provided the project received a concurrency
26 exemption certificate issued pursuant to Ordinance 89-35, as
27 amended and the following criteria are met:

28 A platted non-residential parcel, if all required improvements
29 associated with the plat have been installed or guaranteed.

30 X. Administrative Appeal

31 A. General - An applicant may appeal a decision of the
32 Planning Director denying Concurrency Exemption Extension by filing

1 a petition with the Planning Director appealing the decision to the
2 Concurrency Review Board within thirty (30) days of the rendition
3 of the decision by the Planning Director.

4 B. Concurrency Review Board Membership - The Concurrency
5 Review Board shall consist of the Executive Director of the
6 Department of Planning, Zoning and Building, the County Attorney
7 and the County Engineer.

8 C. Procedure - The Concurrency Review Board shall consider
9 the appeal petition within sixty (60) days of filing. In
10 considering the appeal, the Concurrency Review Board shall consider
11 only the record before the Planning Director at the time of the
12 decision, testimony of the petitioner and the petitioners' agents
13 and testimony of County staff.

14 D. Standard - The Concurrency Review Board shall reverse the
15 decision of the Planning Director only if there is competent
16 substantial evidence in the record that the application complies
17 with the standards of Section VII.

18 E. Written Order - The decision of the Concurrency Review
19 Board shall be in writing and a copy of the decision shall be
20 forwarded to the appealing party.

21 F. Appeal to Circuit Court - An applicant may appeal a final
22 decision of the Concurrency Review Board within thirty (30) days of
23 the rendition of the decision by filing a petition for Writ of
24 Certiorari in Circuit Court of the Fifteenth Judicial Circuit in
25 and for Palm Beach County, Florida.

26 Section XI. Captions The captions, section headings, and section
27 designation used in this ordinance are intended for convenience of
28 users only and shall have no effect on the interpretation of the
29 provisions of this ordinance.

30 Section XII. Inclusion in the Code of Laws and Ordinances

31 The provisions of this Ordinance shall become and be made a part of
32 the Code of Laws and Ordinances of Palm Beach County, Florida. The

1 sections of the Ordinance may be renumbered or relettered to
2 accomplish such, and the word "ordinance" may be changed to
3 "section," "article," or any other appropriate word.

4 section XIII. Repeal of Laws in Conflict All local laws and
5 ordinances applying to the unincorporated areas of Palm Beach
6 County in conflict with any provisions of this ordinance are hereby
7 repealed.

8 Section XIV. Effective Date The provisions of this Ordinance
9 shall become effective upon receipt of acknowledgement by the
10 Secretary of State.

11 APPROVED AND ADOPTED by the Board of County Commissioners
12 of Palm Beach County, Florida, on the ____ day of
13 FEB 19 1991, 1991.

14 PALM BEACH COUNTY, FLORIDA BY ITS
15 BOARD OF COUNTY COMMISSIONERS

16 By: [Signature]
17 Chair JOHN B. DUNKLE, CLERK
Board of County Commissioners

By: [Signature]
DEPUTY CLERK

18 APPROVED AS TO FORM AND
19 LEGAL SUFFICIENCY

20 [Signature]
21 County Attorney

22 Acknowledgement by the Department of State of the State of
23 Florida, on this, the 26th day of February, 1991.

24 EFFECTIVE DATE:

25 Acknowledgement from the Department of State received on the
26 4th day of March, 1991, at 10:58a., and filed in
27 the Office of the Clerk of the Board of County Commissioners of
Palm Beach County, Florida.

28 (exempt.ext)

29 STATE OF FLORIDA, COUNTY OF PALM BEACH
I, JOHN B. DUNKLE, ex-officio Clerk of the
Board of County Commissioners certify this to
be a true and correct copy of the original filed in
my office on 2/19/91
DATED at West Palm Beach, FL on 3/4/91
JOHN B. DUNKLE, Clerk
By: [Signature] D.C.